

To Infinity and Beyond: Expansion of the Army's Commercial Sponsorship Program

Major John Siemietkowski
Professor, Contract and Fiscal Law Department
The Judge Advocate General's School, United States Army
Charlottesville, Virginia

In an era of dwindling resources, commanders at all levels are often faced with a choice between enhancing operational readiness and enhancing unit morale. Budget cuts have limited the Morale, Welfare, and Recreation (MWR) activities that promote morale and help retain quality soldiers. In response to these cuts, the Army initiated a commercial sponsorship program to help fund MWR programs. This article discusses the current commercial sponsorship programs of all the military services. Moreover, this article argues that the Army should expand its commercial sponsorship program within MWR, and expand it even further to non-MWR activities. Finally, this article analyzes the fiscal and ethical obstacles to expansion of the commercial sponsorship program, and proposes ways to negotiate those obstacles.

Background

Resources

"All of the military departments had difficulty meeting their recruiting goals for FY 1999."¹ If MWR activities promote the tandem goals of recruitment and retention,² it follows that decreased MWR activities will result in fewer recruits and

fewer careerists. Therefore, commanders require increased MWR funding to attract and retain quality personnel.³

Commanders fund MWR programs out of money from their Operations and Maintenance (O&M) budget, or sometimes from their Research, Development, Test, and Evaluation (RDT&E) budget.⁴ Congress appropriated \$17,185,623,000 in fiscal year 1999 for the operation and maintenance of the Army, but it did not specify in its appropriations language how much of that money should be spent for MWR programs.⁵ Likewise, Congress appropriated \$92,384,779,000 in fiscal year 2000 for the operation and maintenance of the Department of Defense (DOD), but it did not specify how much of that money was intended for MWR programs.⁶ By statute, Congress permits DOD to spend O&M money on MWR, but does not specify how much O&M money should go towards MWR.⁷

Though commanders complain about not having enough money to spend on MWR, Congress is concerned that commanders are not using enough of their O&M money to fund MWR programs.⁸ However, from their limited O&M funds, commanders must choose between satisfying operational requirements and enhancing soldier morale. Thus, to accomplish the mission and retain quality people, the armed services

1. Major Mary E. Harney et al., *1999 Contract and Fiscal Law Developments—The Year in Review*, ARMY LAW., Jan. 2000, app. a at 134 (citing Jane McHugh, *Monthly Recruiting Sign-ups Worst in 26 Years*, ARMY TIMES, July 26, 1999, at 8).

2. See generally U.S. DEP'T OF ARMY, REG. 215-1, MORALE, WELFARE, AND RECREATION ACTIVITIES AND NONAPPROPRIATED FUND INSTRUMENTALITIES [sic], para. 1-9(b) (25 Oct. 1998) [hereinafter AR 215-1] ("The MWR program supports recruitment and retention of quality personnel."); Major Stephen E. Castlen, *Let the Good Times Roll: Morale, Welfare, and Recreation Operations*, ARMY LAW., June 1996, at 5 ("Soldier morale is vital to accomplishment of Army missions. Army morale, welfare, and recreation operations devote tremendous resources to enhance soldier morale").

3. Captain Eric Drynan wrote:

I truly believe more unit MWR money would improve retention numbers. I don't know about recruitment numbers, but I've seen a lot of soldiers here a lot happier due to the things MWR has given them. For example, at the Super Bowl party I overheard a couple of soldiers saying, "Maybe this assignment won't be too bad" as they chowed down on chicken wings and soda. The MWR committee in the hospital has great ideas, but with such limited money we can hardly do anything. If we had more money and the soldiers had control of what they could do with it, their morale would be much higher. I think this is very important to retention!

E-mail from Captain Eric Drynan, Bravo and Student Company Commander, Eisenhower Army Medical Center, Fort Gordon, Ga., to author (Feb. 7, 2000) (on file with author).

4. AR 215-1, *supra* note 2, at para. 4-3(b) ("[Appropriated funds] are limited to Operations and Maintenance, Army (OMA), O & M Army Reserve (OMAR), and Research, Development, Test, and Evaluation (RDT&E) when the installation base operations support is funded by RDT&E").

5. H.R. CONF. REP. NO. 105-746, at 4 (1998).

6. H.R. CONF. REP. NO. 106-371, at 111 (1999).

7. 10 U.S.C. § 2241 (Supp. V 2000).

must find creative ways to fund MWR programs from sources other than O&M money.

DOD Response

One DOD response to this funding issue is the commercial sponsorship program. DOD sets out its policy on commercial sponsorship in Enclosure 9 to *DOD Instruction 1015.10*.⁹ DOD defines commercial sponsorship as

the act of providing assistance, funding, goods, equipment (including fixed assets), or services to an MWR program(s) [or] event(s) by an individual, agency, association, company or corporation, or other entity (sponsor) for a specific (limited) period of time in return for public recognition or advertising promotions.¹⁰

In a nutshell, commercial sponsorship is a contractual agreement between the Army and the sponsor. The Army provides access to its advertising market, and the sponsor supports a program or event.

Commercial sponsorship may be solicited or unsolicited, and does not include gifts or donations.¹¹ Sponsorship agreements must be written, and must be for periods of one year or less.¹² The sponsor and the MWR activity may renew the

agreements annually, for a total term not to exceed five years.¹³ All sponsorship agreements require a legal review.¹⁴

Naturally, sponsors will expect something in return for their sponsorship. The more they sponsor, the more they will likely expect in return. Enclosure 9 to *DOD Instruction 1015.10* reflects this anticipation, because it states that “[a]ssistance provided [to the sponsor] is commensurate with the level of sponsorship offered.”¹⁵ MWR activities may not grant special concessions or favored treatment to sponsors, beyond the public recognition described in the sponsorship agreement.¹⁶ “In addition, individuals or entities not providing sponsorship are not treated with disfavor [and should not] suffer any form of reprisal.”¹⁷ The instruction requires a government disclaimer on any public recognition, as “the Department of Defense does not endorse [or] favor any commercial supplier, product, or service.”¹⁸ The instruction also forbids solicitation of tobacco and alcoholic beverage sponsorship, and allows unsolicited sponsorship only under certain conditions.¹⁹

Army Response

The Army recognizes that strong MWR programs help it recruit and retain quality soldiers.²⁰ Commanders fund MWR programs with appropriated funds (APFs), non-appropriated funds (NAFs), or a combination of both.²¹ However, commanders have not always had enough money to fund MWR programs. This was particularly true during the restricted military

8. H.R. REP. NO. 106-162, at 316-17 (1999).

The committee is concerned that ever tightening pressures on the operations and maintenance budgets of the military services are causing the Department of Defense to stray from well established principles of support for Morale, Welfare, and Recreation programsThe committee notes that the military services have not demonstrated a serious commitment to fund Morale, Welfare, and Recreation programs.

Telephone Interview with Tom Hawley, Professional Staff Member, House Armed Services Committee (Jan. 27, 2000).

9. U.S. DEP'T OF DEFENSE, INSTR. 1015.10, PROGRAMS FOR MILITARY MORALE, WELFARE, AND RECREATION (3 NOV. 1995) [hereinafter DOD INSTR. 1015.10].

10. *Id.* para. A(1).

11. *Id.*

12. *Id.* para. A(2)(b).

13. *Id.*

14. *Id.*

15. *Id.* para. A(2)(c).

16. *Id.*

17. *Id.*

18. *Id.* para. A(2)(e).

19. *Id.* para. A(2)(h).

20. AR 215-1, *supra* note 2.

21. *Id.* para. 4-1.

budgets of the late 1980s.²² In response to these budget cut-backs, DOD approved the commercial sponsorship program on December 22, 1988.²³ DOD intended the commercial sponsorship program to upgrade the quality of MWR events for soldiers and their families in the “constrained budgetary climate that now exists in the MWR arena.”²⁴

Chapter 7 of *Army Regulation 215-1* establishes the rules for commercial sponsorship²⁵ within the Army, most of which parallel the rules in *DOD Instruction 1015.10*. The regulation limits commercial sponsorship to “MWR programs and events, [and to the] Army Family Team Building and Army Family Action Plan . . . programs that are closely linked to MWR activities.”²⁶ The regulation also mandates an ethics briefing for MWR employees working with commercial sponsors.²⁷ Both the regulation and the instruction require MWR personnel to solicit sponsorship competitively.²⁸

Response of Other Services

Like the Army, the other military services sought ways to increase funding for their MWR programs.²⁹ Pursuant to *DOD*

Instruction 1015.10, Enclosure 9, each service developed a commercial sponsorship program. As with the Army program, commercial sponsorship for the Air Force helps “finance enhancements for MWR elements of [s]ervice events, activities, and programs.”³⁰ The Air Force requires competitive solicitation of sponsorship, but goes further in requiring publication of solicitation announcements in the *Commerce Business Daily*.³¹

The Navy’s implementing regulation for their commercial sponsorship program does little more than adopt *DOD Instruction 1015.10*.³² The Navy’s commercial sponsorship guidebook, however, provides very helpful examples of activities that are appropriate and inappropriate within the limits of the sponsorship program.³³ The Marine Corps MWR regulation³⁴ addresses commercial sponsorship in Chapter 6, and the Marine Corps commercial sponsorship manual provides additional guidance to MWR personnel.³⁵ One distinction of the Marine Corps commercial sponsorship program is the use of regional offices that review proposed sponsorship agreements for the East Coast, West Coast, and overseas regions.³⁶

22. See Major Michael R. McWright, *Ten Years of Commercial Sponsorship: Comparing and Contrasting the Army, Navy, Marine Corps and Air Force Commercial Sponsorship Programs* (1998) at 2 (unpublished LL.M. research paper, The Judge Advocate General’s School, U.S. Army (Charlottesville, Va.)) (on file with author [hereinafter McWright]); Joseph P. Zocchi, *Commercial Sponsorship: Solution for Army Morale, Welfare, and Recreation Programs or Shortsighted Folly?*, *ARMY LAW.*, Sept. 1990, at 10 [hereinafter Zocchi].

23. Zocchi, *supra* note 22 (citing Memorandum, Deputy Assistant Secretary of Defense, Military Manpower and Personnel Policy, subject: Commercial Sponsorship of Morale, Welfare and Recreation (MWR) Events (22 Dec. 1988)).

24. *Id.*

25. Along with commercial sponsorship, the Army has also sought to increase MWR revenue through its commercial advertising program. *DOD INSTR.* 1015.10, *supra* note 9, at encl. 10; *AR 215-1*, *supra* note 2, at para. 7-44 (“The liberalization of advertising policy is intended to create a source of MWR revenue that complements the commercial sponsorship program.”); Joseph P. Zocchi, *The Brave New World of Morale, Welfare, and Recreation Advertising*, *ARMY LAW.*, Feb. 1996, at 43. Though this article will not focus on the commercial advertising program, it is yet another example in an Army trend to find creative sources of MWR funding.

26. *AR 215-1*, *supra* note 2, para. 7-47(b).

27. *Id.* para. 7-47(c)(1).

28. *Id.* para. 7-47(d); *DOD INSTR.* 1015.10, *supra* note 9, encl. 9, para. B(3). See Major Annamary Sullivan, *Further Adventures in Commercial Sponsorship*, *ARMY LAW.*, Dec. 1991, at 7. (“The key here is that sponsorship must be solicited competitively”).

29. This article does not attempt to survey extensively the commercial sponsorship programs of all the services. For an excellent history and survey of these various programs, see McWright, *supra* note 22.

30. U.S. DEP’T OF AIR FORCE, SECRETARY OF THE AIR FORCE INSTR. 34-407, AIR FORCE COMMERCIAL SPONSORSHIP PROGRAM, para. 1.1 (17 Feb. 1999).

31. U.S. DEP’T OF AIR FORCE, MANUAL 34-216, AIR FORCE COMMERCIAL SPONSORSHIP PROCEDURES, para. 2 (4 Nov. 1994).

32. U.S. DEP’T OF NAVY, SECRETARY OF THE NAVY INSTR. 1700.12, MORALE, WELFARE, AND RECREATION (18 Sept. 1997).

33. BUREAU OF NAVAL PERSONNEL, A PRACTICAL GUIDEBOOK FOR NAVY CORPORATE SPONSOR AND PARTNERSHIP OPPORTUNITIES (Sept. 1998).

34. HEADQUARTERS, U.S. MARINE CORPS, MARINE CORPS MORALE, WELFARE AND RECREATION POLICY MANUAL (5 Sept. 1990).

35. HEADQUARTERS, U.S. MARINE CORPS, COMMERCIAL SPONSORSHIP PROGRAM AND POLICY MANUAL (1998).

36. Telephone Interview with Mary Wiles, Sponsorship Coordinator, Marine Corps Air Station, Beaufort, S.C. (Jan. 28, 2000).

Putting the Policies Into Practice

The commercial sponsorship programs of the military services are alive and well in practice. For example, flashing at the bottom of the Army's MWR web page are the words, "This space could be your ad!"³⁷ The Army's commercial sponsorship web page is chock-full of aggressive marketing aimed at locking in lucrative sponsorship agreements. Before entering the web page, potential sponsors are greeted with the following message, displayed next to a picture of a group of enthusiastic soldiers: "**YOUR MISSION: CAPTURE THEIR BUYING POWER. YOUR STRATEGY: BE ALL YOU CAN BE WITH ARMY SPONSORSHIP.**"³⁸ Next on the web page, the program promises, "If you can dream it, we can create it! Our creative, knowledgeable sponsorship team can make your ideas a reality. We can develop new avenues to maximize your advertising investment. If reaching the Army market is your goal, let us customize a sponsorship package that's right for your company."³⁹

The commercial sponsorship web page clearly states the Army's corporate sponsorship mission: "The MISSION of the Army Sponsorship Program is to support vital military MWR programs by obtaining private sector funding, services, or supplies in exchange for advertising and promotional opportunities within the Army community."⁴⁰ The web page goes on to list sponsorship opportunities for businesses. These include the Army Soldier Show, Better Opportunities for Single Soldiers (BOSS), the Army Recreation Machine Program, Restaurants, Resort Hotels, Youth Sports, World Class Athlete programs,

golf and bowling tournaments, photography contests, and arts and crafts events.⁴¹ The web page also tells how soldiers and their families benefit from the "Miller Time Dog Days of Summer" concert series. This event, sponsored by Miller Beer, has brought artists like Toby Keith, Clay Walker, Peter Frampton, and The Commodores to Army posts throughout the United States.⁴² The web page also encourages businesses to "add your company to our list of successful sponsors" that includes AT&T, Gillette, 7-Up, Gatorade, Anheuser-Busch, Visa, the Association of the United States Army, Kodak, Pepsi, and Coke.⁴³

Though not as aggressive as the Army's sponsorship marketing,⁴⁴ the other services⁴⁵ also actively pursue corporate sponsorship agreements. Running across the Air Force commercial sponsorship web page are the words, "Don't let this opportunity fly by!"⁴⁶ The Navy welcomes potential sponsors to its web page with, "JOIN THE NAVY, SEE THE WORLD, AND WATCH YOUR SHIP COME IN."⁴⁷ The Navy web page promises access to a market of two million potential customers and offers "a unique opportunity to showcase your products or services while demonstrating support to the military community stationed at home and abroad."⁴⁸ The Marine Corps commercial sponsorship web page advertises its program as a "win-win" partnership that gives "sponsors many opportunities to select the best venues and promotional outlets to showcase products and services."⁴⁹

37. The U.S. Army Community and Family Support Center Corporate Sponsorship Office, *Army Morale, Welfare and Recreation*, at <http://trol.redstone.army.mil/mwr> (last visited Aug. 18, 2000).

38. *Id.* at <http://trol.redstone.army.mil/mwr/sponsorship/display.html>.

39. *Id.* at <http://trol.redstone.army.mil/mwr/sponsorship>.

40. *Id.* at <http://trol.redstone.army.mil/mwr/sponsorship/mission.html>.

41. *Id.* at <http://trol.redstone.army.mil/mwr/sponsorship/home.html>. This portion of the web page adds, "and of course, anything is possible."

42. *Id.* at <http://trol.redstone.army.mil/mwr/sponsorship/ddos.html>.

43. *Id.* at <http://trol.redstone.army.mil/mwr/sponsorship/home.html>.

44. The Army runs its commercial sponsorship program from its Community and Family Support Center (CFSC) in Alexandria, Virginia. The CFSC provides its commercial sponsorship employees with an extensive sponsorship guidebook. U.S. ARMY COMMUNITY AND FAMILY SUPPORT CENTER, *ARMY SPONSORSHIP DESK REFERENCE* (2d ed. 1999).

45. The Air Force runs its program out of a similar, centralized, office in San Antonio, Texas. Neither the Navy nor the Marine Corps have centralized sponsorship offices. Interview with Jennifer L. Wicks, Field Assistance Manager, Army Corporate Sponsorship and Advertising Team, in Alexandria, Va. (Feb. 7, 2000); telephone interview with George Holz, MWR Legal Counsel, MWR Division, Bureau of Navy Personnel Command (Mar. 28, 2000) (confirming that Navy Commercial Sponsorship does not have a centralized office).

46. Headquarters, Air Forces Services Agency Sponsorship Program, *Marketing/Sponsorship*, at <http://www.afsv.af.mil/Sponsorship/SponsorshipPublic2.htm> (last visited Aug. 18, 2000).

47. U.S. Navy Morale, Welfare and Recreation Corporate Sponsor and Partnership Program, *Corporate Sponsorship*, at <http://www.mwr.navy.mil/mwrprgms/comspon2.htm> (last visited Aug. 18, 2000).

48. *Id.*

Approaching Infinity: Expansion of the Commercial Sponsorship Program

The following scenarios illustrate the current sponsorship program, and the possibilities for enhanced corporate sponsorship under an expanded program.

Scenario 1:

SPC Austin: Are you going to the Coca-Cola country music festival on post this Saturday?

SPC Travis: Yee-hah! You bet your boots I am. I reckon I normally couldn't afford something like this, but since Coke is sponsoring it, and it's on post, I can go!

Scenario 2:

COL Willie: Sir, do you want to work out at Gym 5 this afternoon?

BG Nelson: You mean the 'Foot Locker' gym? Absolutely. I used to hate going there when it was a real dump. But now that Foot-Locker has refurbished it, I love going there. It really keeps me in shape!

Scenario 3:

PVT Waylon: Boy, these PT uniforms they gave us at Basic sure are ugly.

PVT Jennings: Yeah, but at least we don't have to pay for them, and neither does the Army. With this cool Nike swoosh on the sleeve, I heard they don't cost Uncle Sam a penny.

Scenario 1 exemplifies the services' existing sponsorship programs. Rather than the "Coca Cola Music Festival" described in our fictional scenario, Miller Beer and 7-Up have sponsored the Army's summer concert tours.⁵⁰ If current law and policy allow corporate sponsorship of MWR events, why not expand such sponsorship to include MWR facilities and even non-MWR activities. In other words, if current practice permits the Miller Beer "Dog Days of Summer" concert series, why not extend the program to allow sponsorship of a "Foot-Locker Gym 5" or of "Nike PT uniforms"? Expanding commercial sponsorship could only improve the quality of these MWR and non-MWR activities.

Restrictions on Expansion of Commercial Sponsorship

DOD divides MWR activities into three categories, based upon the amount of appropriated funds they receive and their abilities to generate revenue.⁵¹ Traditionally, the Army has limited commercial sponsorship to Category C MWR activities.⁵² The policy justification for this limitation is found in *Army Regulation 215-1*, paragraph 7-47(a). This section limits commercial sponsorship to "MWR program(s) or event(s) . . . for a specific (limited) period of time . . ." Paragraph 7-47(b) also restricts commercial sponsorship to "MWR programs and events . . ." One could argue that a gym or pool is not a "program" or "event" and therefore does not qualify for sponsorship. One could also argue that sponsorship of a fixed facility like a gym would not be—unlike a concert—for a "specific (limited) period of time," as envisioned by the regulation's drafters. Finally, the regulation provides that the Army funds Category A and B MWR activities primarily through appropriated funds.⁵³ Opponents of expansion of sponsorship could argue that supplementing these activities with private funds is an improper "augmentation" of appropriated funded activities.⁵⁴

49. U.S. Marine Corps Commercial Sponsorship Program, *How to Do Business*, at <http://www.usmc-mccs.org/howto/htm> (last visited Aug. 18, 2000). One interesting example of Marine Corps sponsorship is "Team Marines Racing." NASCAR driver Hank Parker, Jr. drives a racecar promoting the Marines. Though the Marines buy advertising space on the car, owner Rick Rathburn actually owns the sponsorship program. Brian Hilderbrand, *Marine Sponsorship Pays Dividends for Car Owner*, THE LAS VEGAS SUN, Mar. 2, 2000, available at <http://www.lasvegassun.com/sunbin/stories/text/2000/mar/02/509930945.html>.

50. COMMUNITY & FAMILY SUPPORT CENTER, ARMY COMMERCIAL SPONSORSHIP AND ADVERTISING, A WORLD OF SPONSORSHIP OPPORTUNITIES WITH TODAY'S ARMY (n.d.).

51. DOD INSTR. 1015.10, *supra* note 9, encl. 4; AR 215-1, *supra* note 2, para. 4-1. Category A activities are mission-sustaining activities that generate little or no revenue and receive most of their funding from appropriated funds. Category A activities include gyms, pools, libraries, and sports events. Category B, community support activities, are closely related to Category A activities in that they make military installations temporary home towns for a mobile military population. They receive substantial appropriated fund support, but not as much as Category A, because they may generate limited revenue. Category B activities include arts and crafts centers, automotive centers, bowling centers, child development services, and outdoor recreation programs. Category C, revenue-generating activities, have less impact on readiness but offer desirable social and recreational opportunities. Because they generate revenue, they receive limited appropriated fund support. Category C activities include armed forces recreation centers, bingo, golf courses, clubs, stables, rod and gun activities, and skating rinks. See also Castlen, *supra* note 2, at 17-19.

52. Wicks Interview, *supra* note 45.

53. AR 215-1, *supra* note 2, para. 4-1.

Arguments for Expansion from Scenario 1 to Scenario 2

Despite these arguments against expansion, there is nothing in either *DOD Instruction 1015.10*, enclosure 9, or *Army Regulation 215-1*, paragraph 7-47, that expressly prohibits the expansion of commercial sponsorship to Category A and B activities. For this reason and those that follow, objections to expansion from scenario 1 to scenario 2 are policy-based rather than law-based.⁵⁵

Although the regulation limits sponsorship to programs or events, maintaining a high level of physical fitness is a “program” within the regulation’s language. If a gym is not important to a physical fitness “program,” then what is? Moreover, the regulation allows sponsors to provide “equipment (including fixed assets), or services”⁵⁶ A gym is arguably a “fixed asset” and, if not the gym itself, then the exercise devices (weights, treadmills, stairmasters, bikes, etc.) in the gym certainly qualify as “equipment (including fixed assets).” It is therefore logical that FootLocker, The Athlete’s Foot, Adidas, or any business could sponsor an on-post gym or at least the exercise equipment in the gym.

The “specific (limited) period of time” restriction in *Army Regulation 215-1* is not an insurmountable obstacle. The definition of “program” found in *DOD Instruction 1015.10* does not specify a time limit,⁵⁷ nor does the definition of “program” in *Army Regulation 215-1*.⁵⁸ In practice, programs lasting for indefinite time periods qualify for sponsorship. For example, a bowling center typically exists for an unlimited period, yet still qualifies for sponsorship as a Category C activity.⁵⁹ Thus, only the commercial sponsorship—not the program itself—need be for a limited time. The regulation clearly permits sponsorship agreements for one year or less, with renewals available up to

five years.⁶⁰ While not indefinite, the one year agreement period coupled with the five year renewal period seem to swallow the “specific (limited) period of time” rule.⁶¹ Therefore, one could reasonably conclude that the regulation would permit sponsorship of Gym 5 as the “The Foot Locker Gym” for one year (up to five years), followed by a year (up to five years) as “The Adidas Gym.”

Appropriated and non-appropriated funds can be spent on Category A and B activities.⁶² Through the use of non-appropriated funds, these Category A and B activities become, at least partially, non-appropriated fund activities. Likewise, although non-appropriated funds and limited appropriated funds are available for Category C activities, they still remain non-appropriated fund activities. Thus, a non-appropriated fund activity should not lose its status simply because it receives appropriated funds. The key to viewing non-appropriated fund activities is to equate them to the commercial enterprises with which the military conducts business. When the Army spends appropriated funds to buy supplies from commercial sources like Staples or Office Depot, these purchases do not transform those entities into appropriated fund activities. Likewise, spending appropriated funds on non-appropriated fund MWR activities should not make them appropriated fund activities.

Expansion of commercial sponsorship to Category A and B MWR activities would not violate the augmentation prohibition of *Army Regulation 215-1* either. Augmentation occurs only when a command augments congressionally appropriated funds. However, “[non-appropriated fund] expenditures for valid MWR purposes are not an augmentation of appropriations.”⁶³ Therefore, commands cannot “augment” non-appropriated fund activities because commanders cannot logically

54. Augmentation is an action that increases the amount of funds available in an agency’s appropriation. This usually results in the agency spending more money than originally appropriated by Congress. Augmentation may violate U.S. CONST. art. I, § 9, cl. 7 (providing that only Congress has the power of the purse), 31 U.S.C. § 3302(b) (Supp. IV 1999) (requiring agencies to deposit any money received from miscellaneous sources into the general treasury), and 31 U.S.C. § 1301(a) (requiring agencies to apply appropriations only to those objects for which Congress made them). See generally discussion *infra* under Fiscal Law Objections heading.

55. In practice, installations may use sponsorship primarily for Category C activities because many of the Category A and B activities may not have the visibility that Category C MWR events have. This does not necessarily mean, however, that installations are not pursuing sponsorship of Category A and B activities, because they are. Installations could entertain additional sponsorship of components of A and B programs, or A and B events. E-mail from Steven Rosso, Attorney, U.S. Army Community & Family Support Center, Alexandria, Va., to author (Mar. 1, 2000) (on file with author). Nonetheless, there may be practitioners in the field who believe that there are legal objections to expansion of sponsorship to A and B programs and A and B events. This section of the article attempts to articulate some of those potential legal objections and then dispel them. The reader should be left understanding that the objections are policy ones rather than legal ones.

56. AR 215-1, *supra* note 2, para. 7-47(a); DOD INSTR. 1015.10, *supra* note 9, encl. 9, para. A(1). Fixed assets are assets “with productive or service lives longer than 2 years and unit costs of \$1,000 or more that are used for the production or sale of other assets or services.” AR 215-1, *supra* note 2, glossary.

57. DOD INSTR. 1015.10, *supra* note 9, encl. 2.

58. AR 215-1, *supra* note 2, glossary.

59. *Id.* fig. 4-1.

60. *Id.* para. 7-47(c)(2); DOD INSTR. 1015.10, *supra* note 9, encl. 9, para. A(2)(b).

61. Zocchi, *supra* note 23, at 12.

62. AR 215-1, *supra* note 2, para. 4-1.

augment something not funded by Congress. Thus, this type of expenditure would not violate the augmentation prohibition.

Objections to expansion of sponsorship to Category A and B activities would therefore be policy, rather than legal, objections. However, the military has already addressed several of these policy concerns in its other business-like programs.

Expansion of sponsorship to Category A and B activities would follow the trend set by other Army programs that are conducted more like businesses. As mentioned earlier in this article, DOD authorizes MWR advertising.⁶⁴ Unlike commercial sponsorship, however, the advertising program contains no “program or events” or “specific limited period of time” restrictions.⁶⁵ As a practical matter, this means that a MWR activity could call its sponsorship program an advertisement to circumvent the “program or events” sponsorship requirement. For instance, rather than calling a swimming pool the “Speedo Aquatic Center,” MWR could still call it “north pool” but hang Speedo advertising banners in the swimming area. This would keep the agreement in compliance with the advertising regulations. Interestingly, the Command Judge Advocate at the Army Community and Family Support Center once recommended disapproval of a proposed agreement for advertising banners inside an on-post gym when he was the Deputy Staff Judge Advocate for the Military District of Washington.⁶⁶ The rationale was that a post gym’s walls are APF-produced media rather than NAF-produced media.⁶⁷ The obstacle, therefore, appeared to be the prohibition of *Army Regulation 215-1*, para. 7-44g(3)⁶⁸ rather than an augmentation problem. It would not be an augmentation problem because mixing appropriated funds with non-appropriated funds in a MWR activity does not change the primary non-appropriated fund nature of that activ-

ity.⁶⁹ Moreover, forbidding advertising in gyms would apply inconsistent logic to the advertising analysis. If advertisements are permissible on installation ball fields (and they are common on many installations), then why are they not permissible in installation gyms? How is a ball field different from a gym?⁷⁰ Putting aside the fiscal law analysis, how does one explain this inconsistency to the average soldier, average commander, or even the average citizen?

Contracting is another way that the military already partners with private industry to deliver MWR services to service members and their families in a business-like manner. For instance, *DOD Instruction 1015.10*, Enclosure 8, authorizes the use of appropriated funds to contract with private fitness facilities when military fitness facilities are not available.⁷¹ If these regulations allow the military to contract with off-post athletic facilities, why not allow the off-post athletic facilities to run on-post programs, either through a contract or even through sponsorship? To the average soldier, commander, or citizen, how different is going to Gold’s Gym off-post than going to Gold’s Gym across post?

Another example of the privatization of the Army’s business is the A-76 outsourcing initiative.⁷² This program requires the military to conduct studies to determine whether it would be cheaper to contract out the work currently being done by government workers. If it is cheaper to contract out the work, then a private contractor is allowed to perform the government operation. In this way, control is retained over inherently governmental functions, but the agency achieves economy and enhances productivity through the use of cost comparisons.

63. *Id.* app. D.

64. DOD INSTR. 1015.10, *supra* note 9, encl. 10, Advertising Policy; AR 215-1, *supra* note 2, para. 7-44.

65. It does, however, restrict commercial advertising by prohibiting it on appropriated fund electronic media. AR 215-1, *supra* note 2, para. 7-44g(3).

66. Interview with Lieutenant Colonel Daniel P. Shaver, Command Judge Advocate, Ronald K. Heuer, Deputy Counsel, and Joseph P. Zocchi, Contract Attorney, U.S. Army Community & Family Support Center, in Alexandria, Va. (Feb. 7, 2000); E-mail from Lieutenant Colonel Daniel P. Shaver, Command Judge Advocate, U.S. Army Community & Family Support Center, Alexandria, Va., to author (Feb. 29, 2000) (on file with author).

67. E-mail from Lieutenant Colonel Daniel P. Shaver, Command Judge Advocate, U.S. Army Community & Family Support Center, Alexandria, Va., to author (Feb. 29, 2000) (on file with author).

68. AR 215-1, *supra* note 2, at para. 7-44g(3). However, this prohibition applies only to electronic media. It would seem that gymnasium walls would not fit a definition of “electronic” media. Because the prohibition specifically mentions command channels and AFRTS, one could argue that the prohibition applies only to radio and television advertising. On the other hand, the first sentence of paragraph 7-44g may imply that the regulation only permits advertising for NAFIs, rather than APF-built facilities. But why would paragraph 7-44g(3) only mention *electronic* APF media if it did not permit paid commercial advertising on non-electronic APF media? In other words, paragraph 7-44g(3) may broaden the NAFI limit established by 7-44g.

69. See generally discussion *supra* under the heading Arguments for Expansion from Scenario 1 to Scenario 2.

70. Ball fields may be different because the Department of the Army apparently approved advertising on NAF-built ball fields in an 18 June 1992 memorandum. E-mail from Lieutenant Colonel Daniel P. Shaver, Command Judge Advocate, U.S. Army Community & Family Support Center, Alexandria, Va., to author (Mar. 24, 2000) (on file with author). To the average soldier or commander, though, how different is a ball field from a gym?

71. DOD INSTR. 1015.10, *supra* note 9, encl. 8, Physical Fitness Services; AR 215-1, *supra* note 2, para. 8-14b(2)(a).

72. FEDERAL OFFICE OF MANAGEMENT & BUDGET, CIR. A-76, PERFORMANCE OF COMMERCIAL ACTIVITIES (1983).

Further evidence of the Army's privatization trend is the move at some Army installations toward privatizing on-post housing. In this system, a private contractor operates the government housing office as a private property management company.⁷³

Fort Gordon, Georgia has taken an interesting approach to partnering with private industry in order to earn more revenue for installation MWR programs. The Directorate of Community Activities negotiated a contract with a local Century 21 real estate broker for housing sales services on-post. Century 21 gives the installation MWR fund 32% of the commissions it earns through the on-post office.⁷⁴

One cutting-edge privatization venture is DOD's Public-Private Venture (PPV) program.⁷⁵

PPV projects are private sector built and/or operated facilities or services on Government-owned real estate in exchange for discounted fees and/or service and an equitable return to the installation's MWR fund. PPV projects are another means of providing MWR facilities that are unattainable through traditional funding sources. They deliver morale-enhancing activities while avoiding capital investment costs, simultaneously producing cash dividends accruing to the installation MWR fund.⁷⁶

An example of a PPV in the Army is an operation at Fort Carson, Colorado, where a private company runs an on-post car wash in exchange for a percentage of their profits going to the installation MWR fund.⁷⁷ The real purpose and benefit of these

PPV projects is the service provided to the military community. Private companies can often provide better services than their military counterparts.

Finally, in one case, the Army has expanded commercial sponsorship beyond MWR activities. In a July 21, 1999 memo, the Acting Assistant Secretary of the Army authorized an exception to policy to authorize the use of commercial sponsorship for Army Community Services (ACS) activities.⁷⁸ The memo, however, limits commercial sponsorship to the non-appropriated fund components of ACS.⁷⁹ Despite this limit, however, the exception to policy may begin to break the ice for sponsorship expansion beyond MWR.

These examples illustrate the trend to operate many parts of the military like a private business. There is a tacit recognition that private industry can operate more efficiently than the military in certain areas.⁸⁰ There is also a timid⁸¹ acceptance that public-private partnerships are necessary to provide certain services that the military can no longer afford.

Consistent with this trend, the Army should expand commercial sponsorship beyond Category C MWR activities to Category A and B activities. As discussed, regulatory or fiscal law objections do not prevent such sponsorship. There are no regulatory objections because Category A and B activities can be considered MWR "programs or events." There are no fiscal law objections because one cannot logically augment non-appropriated fund activities. Without viable regulatory or fiscal law objections, expansion of commercial sponsorship to Category A and B activities makes good sense. Soldiers and their families deserve quality recreation centers, child development services, swimming pools, libraries, and gyms. Expansion of

73. 10 U.S.C. § 2872 (Supp. V 2000). Although this program's goal is better housing services for soldiers, some are concerned that the contractors may not take good care of the soldiers. Telephone Interview with Colonel Kevin E. O'Brien, Office of the Chief Attorney, Headquarters Services, Washington, D.C. (Jan. 27, 2000); Telephone Interview with Captain Laura J. Calese, Office of the Staff Judge Advocate, Fort Carson, Colo. (Jan. 31, 2000). Captain Calese reports that even Fort Carson's commercial sponsorship program is being turned over to contractors.

74. Letter from Terence Cleary, Chief, Administrative and Civil Law, Office of the Staff Judge Advocate, Fort Gordon, Ga. to author (Feb. 2, 2000) (including accompanying materials on Century 21 real estate contract) (on file with author). Although the legal analysis involved issues of government endorsement, monopoly, solicitation, commission disclosures, and commission splitting, this revenue-generating program has encountered less than five disgruntled customers since its inception in 1997. E-mail from Terence Cleary, Chief, Administrative and Civil Law, Office of the Staff Judge Advocate, Fort Gordon, Ga., to author (Mar. 1, 2000). See also Larry Miller, *Century 21 Larry Miller Realty*, at <http://www.c21larrymiller.com> (last visited Aug. 18, 2000) (detailing the Century 21 program).

75. U.S. DEP'T OF DEFENSE, INSTR. 1015.13, DEPARTMENT OF DEFENSE PROCEDURES FOR IMPLEMENTING PUBLIC-PRIVATE VENTURES (PPVs) FOR MORALE, WELFARE AND RECREATION (MWR) CATEGORY C REVENUE-GENERATING ACTIVITIES (17 June 1998) [hereinafter DOD INSTR. 1015.13].

76. AR 215-1, *supra* note 2, para. 10-12a.

77. Calese Interview, *supra* note 73.

78. Memorandum, Office of the Assistant Secretary of Defense, to Assistant Secretary of the Army, Manpower and Reserve Affairs, subject: Request for Exception to Policy: Army Reinvention Laboratory Waiver Request 98-13, Commercial Sponsorship of Army Community Services (21 July 1999).

79. *Id.*

80. Like private businesses, MWR activities usually establish benchmarks and operating standards.

81. This acceptance should increase considering that many of these business-like programs are growing rapidly.

commercial sponsorship to Category A and B activities is one way to accomplish this.

To Infinity and Beyond: Expansion of Sponsorship to Scenario 3

If the Army can expand commercial sponsorship beyond MWR Category C activities, why not expand it beyond MWR activities all together?⁸² If the military trend is towards increased public-private partnerships, why not develop public-private partnerships outside the MWR arena? As described in our third fictional scenario, why not put the Nike swoosh on the PT uniform in exchange for Nike underwriting the cost of distributing the uniforms to new recruits? Why not have “Corcoran” displayed prominently on combat boots in exchange for Corcoran paying for initial issue boots to recruits? How about, “When the Army needed a new voice mail system at the home of the Signal Corps, it turned to AT&T” in exchange for free installation and maintenance of office telephones on Fort Gordon?

The military advantage in these scenarios is getting more products and services for less money. The military, of course, must be careful not to appear to endorse the sponsors. This should not be a problem, however, if the military competitively solicits the sponsorships. If Nike pays for the PT uniforms, then that should free up a pot of money which the military can spend elsewhere. If AT&T installs a voice mail system, then maybe clients can more easily contact their attorneys at SJA offices. Along with freeing up money, this type of sponsorship could also improve the efficiency and professionalism of Army operations, as viewed by both Army and civilian communities.⁸³

This type of expansion, however, clearly goes beyond current regulations because it takes corporate sponsorship beyond MWR. Here, the military is clearly venturing into the ethical and fiscal “twilight zone.”⁸⁴ Such a twilight zone venture presents several legal and policy problems.

Fiscal Law Objections

Power of the Purse

Expansion of sponsorship beyond MWR presents several fiscal law problems. The first problem is that such expansion would interfere with Congress’s power to control the military. Only Congress has the power of the purse.⁸⁵ Expansion of sponsorship beyond MWR would infringe on Congress’s power of the purse because the military would be taking in additional money in order to expand its operations, all without the required congressional approval.⁸⁶ An attempt by the military to expand sponsorship beyond MWR would therefore involve an effort to expand the contours of our military operations. Per the Constitution, only Congress has this power.⁸⁷

Miscellaneous Receipts

Expansion of sponsorship beyond MWR also presents an augmentation problem. Though augmentation is not an obstacle with non-appropriated fund activities, there is a clear prohibition on augmenting appropriated fund activities.⁸⁸ The Miscellaneous Receipts Statute, 31 U.S.C.A. § 3302(b), mandates that any money received from miscellaneous sources must be deposited in the general treasury.⁸⁹ Scenario 3 would violate the Miscellaneous Receipts Statute because Nike’s

82. The Joint Ethics Regulation allows the Army to “fund” appropriated-fund conferences through co-sponsorship agreements. U.S. DEP’T OF DEFENSE, REG. 5500.7-R, JOINT ETHICS REGULATION, para. 3-206 (30 Aug. 1993, as amended to Aug. 1999) [hereinafter JER]. These conferences are usually not MWR activities. If the military can fund these non-MWR conferences, why not expand sponsorship beyond MWR all together?

83. Mindful of the inherent limitations in military practice compared to private practice, the Army could nonetheless use sponsorship dollars to improve the professional appearance and efficiency of its operations.

84. E-mail from Alfred Novotne, Attorney, Army Standards of Conduct Office, to author (Oct. 12, 1999) (on file with author).

85. U.S. CONST. art. I, § 9, cl. 7. See Colonel Richard D. Rosen, *Funding “Non-Traditional” Military Operations: The Alluring Myth of a Presidential Power of the Purse*, 155 MIL. L. REV. 1, 111 (1998) (“The federal courts have consistently interpreted the appropriations clause as conferring on Congress—and on Congress alone—the power of the purse”).

86. The Constitution presupposes a distinction between the public sphere and the private sphere and permits expansion of the public sphere only with legislative approval. See generally U.S. CONST. art. I. The appropriations requirement both reflects and implements these fundamental constitutional choices. In specifying the activities on which public funds may be spent, the legislature defines the contours of the federal government.

87. Kate Stith, *Congress’s Power of the Purse*, 97 YALE L.J. 1343, 1345 (1988).

88. See generally *supra* note 54 and accompanying text; discussion *supra* under the heading Arguments for Expansion of Commercial Sponsorship Program.

89. 31 U.S.C. § 3302(b) (Supp. IV 1999). The Comptroller General has opined that money received from miscellaneous sources must be deposited in the general treasury. Interest Earned on Unauthorized Loans of Federal Grant Funds, 71 Comp. Gen. 387 (1992) (ruling that interest earned by grantees on unauthorized loans belongs to the United States and must be deposited in the treasury as miscellaneous receipts); Use of Appropriated Funds by Air Force to Provide Support for Child Care Centers for Children of Civilian Employees, 67 Comp. Gen. 443 (1988) (ruling that payments received by the Air Force for its capital improvement expenditures for its child care centers must be deposited in the treasury as miscellaneous receipts).

underwriting the distribution of PT uniforms to recruits would constitute an augmentation of the Army's uniform budget. In other words, funds received from Nike would have to be considered money received from a miscellaneous (non-congressional) source, and would have to be deposited in the general treasury.⁹⁰ This requirement defeats the whole purpose of Nike freeing up more money for the Army to spend because only Congress has access to the general treasury.

The Miscellaneous Receipts Statute is not hollow. In the most recent reported federal court case addressing the Miscellaneous Receipts Statute,⁹¹ a court found that DOD violated the provisions of the Statute. In *Scheduled Airline Traffic Offices v. Dep't of Defense*,⁹² the Defense Construction Supply Center issued a solicitation seeking official and unofficial travel services. The solicitation required deposit of official travel proceeds into the general treasury, and deposit of unofficial travel proceeds into the local MWR fund.⁹³ The court held that unofficial travel proceeds constituted "money for the Government" within the meaning of the Miscellaneous Receipts Statute and thus had to be deposited in the general treasury.⁹⁴

The court, however, was faulty in its analysis of the Miscellaneous Receipts Statute. *Scheduled Airline Traffic Offices* focused solely on the source of the revenue, ignoring the recipient of the revenue.⁹⁵ Although private money is "money from

any source," it is not being received by a purely government agency. NAF activities are at best quasi-government entities.⁹⁶ Because nonappropriated funds are not public moneys, Congress should not be concerned with agencies adding to them.⁹⁷ Taking the court's decision to a logical conclusion, not only is the Army forbidden from funding MWR activities with sponsorships, advertising, and PPVs, it could not even fund MWR activities with user fees. Given the court's reasoning, user fees would constitute "money from any source" that must be deposited into the general treasury rather than into the MWR fund.⁹⁸ Clearly, this could not be Congress's intent. In fact, in response to the court's decision, Congress gave DOD specific statutory authority to craft exactly the type of fee arrangement that the court criticized.⁹⁹

Another interesting Miscellaneous Receipts case is *Bureau of Alcohol, Tobacco, and Firearms – Augmentation of Appropriations – Replacement of Autos by Negligent Third Parties*.¹⁰⁰ In that case, the Comptroller General held that an agency may receive in-kind replacement of vehicles from negligent third parties without violating the Miscellaneous Receipts Statute. This in-kind replacement was not an improper augmentation even though the agency had a specific authorization of appropriated funds to replace vehicles.¹⁰¹

90. This is true unless the military could somehow view the money as a "gift" rather than a bargained-for exchange. The DOD may accept gifts under 10 U.S.C. §§ 2601, 2608 (Supp. V. 2000). See generally discussion *infra* under the heading Existing Legal Ways to Overcome Objections.

91. Two other federal cases discuss violations of the Miscellaneous Receipts Statute. In *Reeve Aleutian Airways, Inc. v. Rice*, 789 F.Supp. 417 (D.D.C. 1992), Elmendorf Air Force Base in Alaska solicited bids for a travel contract wherein the successful bidder would pay a concession fee to the MWR fund at a remote Alaskan Air Force base. Finding that the concession fees were somehow a loan from U.S. taxpayers to the government, the court ruled that the concession fees were "public monies" that had to be deposited in the general treasury. In its decision, the court focused solely on the source of the revenue, ignoring the recipient of the revenue. In *Motor Coach Industries v. Dole*, 725 F.2d 958 (4th Cir. 1984), the Federal Aviation Administration (FAA) agreed with several airlines serving Dulles Airport to establish a trust funded by airline user fees to purchase additional ground transport busses for the airport. Ruling that such an agreement violated the Miscellaneous Receipts Statute, the court reasoned that "the [trust] was an attempt by the FAA to divert funds from their intended destination—the United States Treasury. Although the purpose for which the FAA sought the funds was laudable, its methods certainly cannot be praised." *Id.* at 968. This is a good Miscellaneous Receipts decision because, unlike MWR programs, a Dulles Airport bus fund is not a congressionally recognized non-appropriated fund activity.

92. *Scheduled Airline Traffic Offices v. Dep't of Defense*, 87 F.3d 1356, 1357 (D.C. Cir. 1996).

93. *Id.*

94. *Id.* at 1362.

95. This is relevant because the Miscellaneous Receipts Statute applies only to government recipients. By definition, there is no violation if a private entity receives private money. The Statute only applies when government agencies receive "money from any source." 31 U.S.C. § 3302(b) (Supp. IV 1999).

96. Lieutenant Colonel Terry L. Elling, *Litigation Division Notes: Scheduled Airlines Traffic Offices, Inc., v. Department of Defense*, ARMY LAW., Oct. 1996, at 46 ("Nonappropriated funds are, by definition, 'separate and apart from funds that are recorded on the books of the Treasurer of the United States'") (citing AR 215-1, *supra* note 2, glossary).

97. *Id.* ("By definition, then, the [Miscellaneous Receipts] Statute should have no application to nonappropriated fund revenue generating activities").

98. *Id.* ("As a practical matter, no revenue generated by activities (e.g., concession contracts, user fees, club membership dues) that enjoy any level of government support could be applied to local or departmental MWR programs").

99. 10 U.S.C. § 2646 (Supp. V 2000).

100. *Bureau of Alcohol, Tobacco, and Firearms – Augmentation of Appropriations – Replacement of Autos by Negligent Third Parties*, 67 Comp. Gen. 510 (1988).

101. *Id.*

The *Bureau of Alcohol, Tobacco, and Firearms* opinion is especially interesting because the Comptroller General expressly allowed an in-kind augmentation of an appropriated fund activity. Using this reasoning, could the military allow private companies to make in-kind replacements of buildings, facilities, or fixed items, even in the absence of some tort liability? The opinion seems to allow that, because the government does not receive any *money*. The Comptroller General specifically stated that the Miscellaneous Receipts Statute applies only “when money, as opposed to goods or services, has been provided to the agency.”¹⁰² If this strict reading of the Statute is correct, then it means that the military can accept in-kind sponsorship of goods or services. To go back to earlier examples, this means that the Army can accept PT uniforms from Nike and a voice mail system from AT&T. The difference, of course, is that Nike and AT&T are not liable to the Army in tort. Nonetheless, the language of this opinion is very broad.

The big picture painted by these decisions and opinions is that the military may not augment appropriated fund activities unless Congress provides the authority to do so. Notwithstanding the rulings in *Scheduled Airline Traffic Offices* and *Reeve Aleutian Airways*,¹⁰³ the prohibition on augmenting appears to apply only to appropriated fund activities, not to non-appropriated fund activities.

A basic principle of fiscal law is that augmentation of *appropriations* is not permitted.

An augmentation of an *appropriation* occurs when an agency takes an action which increases the amount of funds available in an *appropriation*. This can result in the agency spending more money than was originally *appropriated* by Congress.¹⁰⁴

In terms of our scenarios, this means that the Miscellaneous Receipts Statute does not prohibit expansion of commercial sponsorship to Category A and B activities, but probably prohibits expansion of sponsorship beyond MWR activities.¹⁰⁵

Ethical Objections

Expansion of commercial sponsorship within MWR and beyond MWR contains several ethical minefields. The Joint Ethics Regulation¹⁰⁶ contains several provisions that those involved in sponsorship, in its current or in an expanded form, must be aware of. One JER section prohibits preferential treatment to or endorsement of any private organization.¹⁰⁷ This prohibition seems to fly in the face of the sponsorship program, though the sponsorship regulations themselves prohibit any special treatment of sponsors beyond that in the agreement itself.¹⁰⁸ In this sense, this prohibition is no more of a concern in sponsorship than it is in contracting where special treatment of contractors is prohibited beyond the terms of the contract itself.¹⁰⁹ Another JER section forbids government employees

102. *Id.*

103. *See supra* notes 91-92 and accompanying text.

104. Major Timothy D. Matheny, *Go On, Take the Money and Run: Understanding the Miscellaneous Receipts Statute and Its Exceptions*, ARMY LAW., Sep. 1997, at 32 (emphasis added).

105. Such a proposed expansion implicates two other fiscal statutes. Under the Anti-Deficiency Act (ADA), 31 U.S.C. § 1341 (Supp. IV 1999), the government is prohibited from spending money that it does not have. *Hercules, Inc. v. United States*, 516 U.S. 417, 427 (1996). In light of this prohibition, commercial sponsorship seems like an ADA problem, because the Army is spending money (corporate money) not appropriated to it. The ADA prohibits over-obligation of government funds. Would augmenting funds with corporate money constitute an over-obligation? Probably, because the statute says that the government cannot “make an expenditure” exceeding an amount appropriated. If the Army makes an expenditure with non-appropriated funds, then the Army may be making an over-obligation. On the other hand, under commercial sponsorship, is not the company “making the expenditure” rather than the government? If the company is making the expenditure, then the Anti-Deficiency Act would not apply. This makes sense given that no one has yet raised an ADA objection to the commercial sponsorship program. If augmentation of funds with corporate money (or any non-appropriated money) constituted an over-obligation, then the entire MWR revenue-generating scheme would violate the ADA. By this analysis, it does not seem that expansion of sponsorship within MWR or beyond MWR would violate the ADA, because it is the sponsor rather than the government that is “making the expenditure.” Under the Purpose Statute, 31 U.S.C. § 1301(a), the government may spend money only for those purposes authorized by Congress. There is a three-part test for determining an appropriation’s proper purpose: (1) the expenditure must be for a particular statutory purpose, or necessary and incident to the proper execution of the general purpose of the appropriation, (2) the expenditure must not be prohibited by law, and (3) The expenditure must not otherwise be provided for. *Secretary of Interior*, 34 Comp. Gen. 195 (1954). It seems that the Purpose Statute would not be an impediment to expansion of commercial sponsorship, because there is no statute or specific appropriation addressing commercial sponsorship. There is therefore no need to determine whether expansion of commercial sponsorship fits a proper statutory purpose, as there is no statute on point. Looking at the purposes in military commercial sponsorship and MWR regulations, however, it seems clear that MWR funds are intended to support MWR activities. Thus, the military should be able to expand sponsorship into Category A and B MWR activities, although expansion beyond MWR may not be possible because the sponsorship regulations apparently require that the sponsorship benefit MWR activities.

106. JER, *supra* note 82.

107. JER, *supra* note 82, para. 3-209. *See* 5 C.F.R. § 2635.101 (2000).

108. Because the DOD has approved the commercial sponsorship program, the DOD has made a policy decision that commercial sponsorship is per se not endorsement.

109. Like contracting, commercial sponsorship also involves a bargained-for exchange.

from accepting bribes or graft.¹¹⁰ While this prohibition is also important for those involved in sponsorship, it is no more important than for those involved in accepting gifts or involved in contracting.

The JER also forbids receiving additional pay or allowances from non-government sources.¹¹¹ This section does not particularly impact commercial sponsorship because there are no provisions under the program which allow for additional pay and allowances for government employees. Like the other provisions, this one applies no more to sponsorship employees than it does to other government employees. Finally, parts of the JER along with federal statutes prohibit conflicts of interest in seeking post-government employment.¹¹² Like the other JER prohibitions, sponsorship employees must be careful not to award or administer sponsorship agreements with companies when they are negotiating employment with those companies. However, this section applies no more specifically to sponsorship employees than to any other group of government employees.

The upshot of all these ethical warnings and prohibitions is that government employees involved in sponsorship, as it exists or in an expanded form, must not use their government position for the personal benefit of themselves or the benefit of a sponsor. In this sense, sponsorship employees are no different than any other government employee. Of course, sponsors may not be aware of our ethical restrictions, or may not feel bound by them.¹¹³ If sponsors conduct other business, such as contracting, with the military, however, they will likely understand the restrictions and abide by them for their own self-interests. The bottom line is that those involved in sponsorship are no more likely to skirt the ethical rules than those involved in contracting or in other government-industry activities.

Perception and Practical Objections

Even if the military overcomes the fiscal law and ethical objections to expansion of commercial sponsorship, it must still overcome several perception and practical problems.

A primary perception problem is the lack of public accountability for how the military raises and spends its sponsorship money. In other words, Congress should decide how much money the military receives for MWR and non-MWR activities. For purposes of public accountability, Congress can raise taxes if it thinks the military needs more money.

A more practical problem is if Congress turns sponsorship into a zero-sum game. Congress may cut DOD budgets if it believes that sponsorship obviates the need for continued budgeted resources in certain areas. Commanders could also begin to believe that sponsorship obviates the need for continued budgeted resources in certain areas. For example, if concert sponsorship becomes a budgeted item, commanders may allocate less O&M money for these types of MWR events.¹¹⁴ This could pose problems if a sponsor suddenly pulls its sponsorship and leaves the command holding the bag without funds to continue the program.

Another perception problem is that the Army may no longer appear disinterested, but will become an instrument of commercial will. This perception problem became a real issue during the 1996 Army Ten Miler road race. Several large defense contractors sponsored that race, albeit through a conduit. Many in the press saw such sponsorship as improper influence peddling.¹¹⁵ On the other hand, the fact that the Army realized its mistakes and corrected them proves that the military can police its own sponsorship activities.

Taken to its extreme, some worry that an Army laden with corporate sponsorship would become like the Chinese army, economically self-sufficient and answerable to no one. The Chinese army "has built itself into a corporate empire, raising substantial revenue from more than 20,000 companies ranging from transport and real estate to coal mines, hotels, restaurants, night clubs and even satellite launches. Economic analysts say it constitutes a parallel mini-economy answerable to no one . . ." ¹¹⁶ For these reasons, China's president has ordered the military to give up its business holdings.¹¹⁷

Perhaps the perception problem that would face an expansion of commercial sponsorship is the perception that it would

110. JER, *supra* note 82, para. 5-400. See 18 U.S.C. § 201 (Supp. IV 1999).

111. JER, *supra* note 82, para. 5-405. See 18 U.S.C. § 209.

112. 18 U.S.C. §§ 207, 208; 41 U.S.C. § 423 (Supp. IV 1999); 5 C.F.R. §§ 2637, 2641; JER, *supra* note 83, chs. 8, 9.

113. Calese Interview, *supra* note 73.

114. Wicks Interview, *supra* note 45.

115. Steve Nearman, *Army Ten-Miler May Have Violated Policy*, WASH. TIMES, Apr. 5, 1996, at B1 ("This open display of sponsorship gives the appearance that prominent firms . . . who battle for billion-dollar defense contracts are helping their cause by providing as much as \$10,000 to support the annual Army race."). See Steve Nearman, *Army Race Bars Defense Sponsorship*, WASH. TIMES, Oct. 8, 1996, at B1.

116. *Jiang Orders Military to Give Up Business Deals in China*, BORNEO BULL., July 24, 1998.

117. *Id.*

dilute the value of the military by somehow making the military less unique. Perhaps the biggest concern is one of integrity. How can the military pledge complete loyalty to the nation's taxpayers if it is also beholden to corporate America? The military must remain disinterested regarding commercial ventures, and must appear that way to the American public.

The Army's job is to fight and win wars.¹¹⁸ This usually involves some level of death and destruction. Because the public entrusts the Army with this responsibility, the Army should conduct its business free of market forces and public pressure.

These thoughts were on the minds of certain members of the Senate Armed Services Committee when they toured the service academies. They viewed certain advertisements as permissible, but were not willing to expand sponsorship to fixed athletic facilities.¹¹⁹ Their idea was that the nation has an obligation to fund these types of facilities.¹²⁰ As a unique institution, the issue boils down to whether the military should raise money itself, or rely strictly on Congress.¹²¹ In other words, should the military become partially self-supporting, or should it remain content with money appropriated to it by Congress? Being a unique institution, the military should remain accountable to the American people. If the public wants the military to have more funding, then it should lobby Congress for additional service dollars. If the people do not want the military to have more money, then the military should not try to circumvent public will by appealing to corporate America.

Existing Ways to Overcome Legal and Policy Objections

Practical Ways to Overcome Objections

There are several practical ways to overcome the legal and policy objections to expansion of commercial sponsorship. Most of them involve using common sense arguments to counter these objections.

The most expedient way to overcome these hurdles is to use good judgment in the expansion of commercial sponsorship. The military does not want the NASCAR image of pervasive sponsorship, nor is it moving towards that reputation.¹²² Allowing advertisements in gyms is a far cry from plastering corporate decals all over a BDU uniform.¹²³ Although individuals' ideas of "appropriate" sponsorship will vary, there is a general consensus in the military of what is not appropriate. There have been few complaints, if any, of inappropriate sponsorship or advertisement agreements under the current programs.¹²⁴ Even if sponsorship expands beyond MWR, the military should trust its sponsorship employees to choose appropriate sponsors just as it now trusts contracting personnel to select suitable contractors.¹²⁵ If they make mistakes, as may have happened with the Army Ten Miler, then the Army should correct the problems without necessarily discarding the entire program.¹²⁶

For those who make sponsorship budgets a zero-sum game, let them get caught holding the bag just once and then watch them budget more carefully the next time around. Just as the market teaches those lessons in the civilian business world, so too can the market guide those in the military business world.

In terms of public accountability, it is unlikely that the military will become beholden to corporate America. It is difficult to imagine a corporate American army along the lines of the Chinese Army. American military culture and a history of civilian control would not allow that. More importantly, Congress can rein in the military if it thinks it is going too far with sponsorship. Just as Congress can control and change the way the military practices military justice,¹²⁷ so too can it control and change the way the military practices commercial sponsorship.

An example of this tension between expanding sponsorship yet retaining the unique quality of the military would be putting a company's logo on the uniforms of West Point's football team.¹²⁸ Some might argue that doing so would dilute the uniqueness of West Point and even of the Army as a whole. To

118. See generally U. S. DEP'T OF ARMY, FIELD MANUAL 100-5, OPERATIONS, introduction and ch. 1 (14 June 1993).

119. Telephone Interview with Charles Abell, Majority Counsel, Senate Armed Services Committee (Jan. 24, 2000).

120. *Id.*

121. Shaver Interview, *supra* note 66.

122. Wicks Interview, *supra* note 45.

123. One might argue that allowing advertisements in gyms would place the military on a slippery slope leading eventually to the plastering of corporate decals all over BDUs. This is no more of a worry in sponsorship, however, than it is in advertising, public-private ventures, or A-76 outsourcing. The military is capable of using discretion in sponsorship just as it is capable of using discretion in these other business-like ventures.

124. As with sponsorship in the civilian world, customer complaints about sponsorship in the military are a sure-fire way to rein in inappropriate sponsorship. "Ultimately consumers are not stupid . . . They will be annoyed, not at the medium[,] but at the company pitching the ad." Caroline E. Mayer, *Ads Showing Up Almost Everywhere*, WASH. POST, Feb. 5, 2000, at A1.

125. The military should also trust its installation commanders in sponsorship matters, as it trusts them in so many other matters.

126. The Army eventually forbade defense contractor sponsorship of Army events. See Nearman, *Army Race Bars Defense Sponsorship*, *supra* note 115, at B1.

argue, however, that accepting such sponsorship at West Point somehow weakens the uniqueness of the institution and of the Army would be an insult to other quality institutions that accept sponsorship. For example, the University of Virginia athletic department has two commercial sponsorship programs.¹²⁹ The University of Maryland has reached a \$20 million deal with Comcast Corporation that will put Comcast's logo on the Terrapin's new arena for the next 25 years.¹³⁰ Does such sponsorship cheapen the value of a degree from that institution?¹³¹ That hardly seems likely,¹³² because the American public's view of sponsorship has changed over the past 20 years. Americans now readily accept the "Southwestern Bell Cotton Bowl" instead of the Cotton Bowl, the "USAirways Arena" instead of the Capital Center, and the "Dockers Halftime Show" instead of the CBS Halftime Show. Though the military remains a bastion of immutable values,¹³³ expanding commercial sponsorship will not somehow dilute those values. The public's acceptance of uniform sponsorship would not necessarily lead to national approval of the abolition of the Honor Code. Moreover, the military must at least partially reflect the public that it serves. Holding the military out as a particularly unique institution runs the risk of causing the public to view the military as an elitist

organization that is out of touch with the society it is sworn to protect.¹³⁴

Existing Legal Ways to Overcome Objections

The best existing legal way to overcome objections to expansion of commercial sponsorship within MWR is to use the current sponsorship regulations themselves. As discussed earlier, the language of the regulations themselves permits growth of sponsorship, at least within MWR.¹³⁵

The current regulations, however, do not appear to permit movement beyond MWR. Gift statutes may provide a means to justify legally expanding sponsorship outside of MWR. Several gift statutes permit the government to accept gifts in certain circumstances.¹³⁶ The Army could argue plausibly that Nike's underwriting of the PT uniforms is a gift to the military that satisfies one of the gift statutes. Even if the Nike sponsorship fit into one of these gift statutes, however, that argument would likely fail. A gift, by its nature, is a donation with nothing expected in return. Sponsorship, by definition, is a giving of

127. For example, in 1998, "Congress ordered the Secretary of Defense to submit alternatives to the current method for selecting members of the armed forces to serve on courts-martial. The only alternative specifically mentioned by Congress was a random selection method." Colonel James A. Young, III, *Revising the Court Member Selection Process*, 163 MIL. L. REV. 91, 92 (2000) (citing Pub. L. No. 105-261, § 552, 112 Stat. 1920 (1998)). Also, in 1993, Congress blocked President Clinton's attempt to amend the Uniform Code of Military Justice regarding homosexual acts and declarations of homosexuality. *Gore's Litmus Test a Clumsy Promise on Gays in the Military*, SACRAMENTO BEE, Jan. 12, 2000, at B8.

128. The author noticed the Reebok logo on the West Point football uniforms during the Army-Navy football game. This is probably just an "off the shelf" label rather than part of a sponsorship agreement. The West Point Staff Judge Advocate office knows of no sponsorship agreements with Reebok. E-mail from Ronald Salvatore, Academy Counsel/Special Assistant to the Staff Judge Advocate, Office of the Staff Judge Advocate, United States Military Academy, to author (Mar. 22, 2000) (on file with author).

129. First Union, State Farm, and Hardees are part of the University of Virginia's "Team Virginia." University of Virginia, *Team Virginia*, at <http://www.virginiasports.com/splash/splash.html> (last visited Aug. 18, 2000). ALLTEL, Sprint, Reebok, and Coca Cola sponsor the "Cavalier Partners" program. *Id.* ("The preceding list of companies have made a substantial contribution to support Virginia Athletics. We are very proud to be long-term partners with these industry leaders and hope our loyal fans will visit their website to check out their products and services").

130. Manuel Perez-Rivas, *The Latest Advertising Arena*, WASH. POST, June 18, 2000, at C-1. The Montgomery County, Maryland, council is also hoping to obtain \$15 million for the naming rights to its new concert hall. *Id.* Not everyone is on this bandwagon, however. One Maryland state senator finds the sale of naming rights at universities an alarming trend, stating, "It's putting the state university's educational imprimatur on a product." *Id.* In California, the president of Stanford University recently forbade ads in school arenas, though he will still permit corporate logos on sports uniforms. INVESTOR'S BUS. DAILY, June 17, 2000, at 2. Stanford's president worries that school athletics are becoming "part of a vast entertainment industry." *Id.*

131. Wicks interview, *supra* note 45.

132. The average fan may not even notice a corporate logo on a uniform. If noticed, the observer may not know if the logo was there pursuant to a sponsorship agreement or just as part of the uniform. Moreover, the observer may not care.

133. The Army issues its soldiers a wallet-sized card with the "Soldier's Code" on one side and "Army Values" on the other. The Army Values are Loyalty, Duty, Respect, Selfless-Service, Honor, Integrity, and Personal Courage.

134. See, e.g., Dick Cady, *Readers Offer Their Takes on Marine Corps, Blues Society*, INDIANAPOLIS STAR, Dec. 9, 1997, at C1 (discussing Assistant Secretary of the Army Sara Lister's description of Marines as extremists who are out of touch with reality); Stephanie Gutmann, *The Great Umbrella Debate*, N.Y. TIMES, Oct. 9, 1997, at A31 (discussing the suggestion that the "Army is a wacky institution out of touch with reality" because it does not allow male soldiers to carry umbrellas); Richard J. Newman, *Human Relations Offensive*, U.S. NEWS & WORLD REPORT, Sep. 22, 1997, at 29 (discussing whether Army leaders are out of touch with the rank and file on gender issues).

135. See generally discussion *supra* under the heading Arguments for Expansion from Scenario 1 to Scenario 2. Although no statute specifically creates and governs MWR, the military's authority to run MWR programs is implicit in several statutes: 10 U.S.C. § 2241 (Supp. V 2000) (permitting DOD to spend O&M money on MWR); 10 U.S.C. § 2246 (prohibiting use of appropriated funds for DOD golf courses); 10 U.S.C. § 2247 (prohibiting use of appropriated funds for Armed Forces Recreation Centers-Europe); 10 U.S.C. § 2482(a) (permitting MWR agencies to contract with other federal agencies to support MWR); 10 U.S.C. § 2783 (detailing financial management and use of non-appropriated funds).

something with an expectation of publicity or sales in return. Thus, without even the gift statutes to rely upon, there does not seem to be a legal way to expand sponsorship beyond MWR under current law.

The military may use sponsorship models developed by other federal agencies to expand its own sponsorship program. There are several federal agencies that not only participate actively in commercial sponsorship, but also conduct their own fundraising. The U.S. Postal Service sponsored the winner of last year's Tour de France, and placed its logo all over his riding jersey.¹³⁷ The Corporation for Public Broadcasting holds telethons to raise money for its member stations.¹³⁸ Perhaps the military could follow their example.

Many federal agencies have their own specific, organic legislation that authorizes fundraising, acceptance of gifts, and public-private ventures.¹³⁹ The nature of these agencies, however, lends itself to fundraising. The American public accepts donations and sponsorship of public broadcasting and the arts because the American public accepts fundraising in those activities as commonplace.¹⁴⁰

This type of specific, organic legislation would be hard to justify for the Army. The Army is a larger, more permanent organization, and the American public does not view the Army as a typical fundraising organization.¹⁴¹ The Army faces a larger perception problem because of its mission and because of the American public's fear of the Military-Industrial Complex.¹⁴² In other words, Chuckie Cheese sponsoring Sesame Street¹⁴³ would probably not bother the public as much as

"Desert Storm, brought to you by General Electric." Congress is therefore not likely to grant the military similar broad-based, open-ended fundraising legislation.

Best Way to Expand Commercial Sponsorship is to Propose Legislation

DOD should expand sponsorship by clarifying *DOD Instruction 1015.10* and its implementing regulations.¹⁴⁴ Though *DODI: 1015.10* already permits such expansion, there may be those who still believe that such expansion is not a good policy idea. DOD should therefore amend those regulations to expressly permit commercial sponsorship of all MWR activities, regardless of category. This would not run afoul of any fiscal law or ethical prohibitions.

Although the American public would not support "This war funded by Lockheed," they would probably back "The Fort Bliss track and field stadium, brought to you by Gatorade." They would probably favor specific legislation authorizing sponsorship for all categories of MWR programs. Moreover, they would probably support legislation authorizing the service secretaries to approve certain non-MWR sponsorships. The taxpayers might accept the Nike swoosh on the PT uniforms, if, in exchange, the Army has more money to buy spare helicopter parts.

To expand sponsorship beyond MWR, however, DOD would need to propose legislation.¹⁴⁵ One such type of legislation could create a "super NAFI" or MWR Agency, or a "Military Commercial Sponsorship Agency," similar to the National

136. See, e.g., 10 U.S.C. § 178 (permitting gifts to the Jackson Foundation for the Advancement of Military Medicine); 10 U.S.C. § 1353 (permitting acceptance of travel benefits); 10 U.S.C. § 1588b (permitting acceptance of voluntary services); 10 U.S.C. § 2601 (permitting gifts for schools, hospitals, etc.); 10 U.S.C. § 2608 (permitting gifts from "persons, foreign governments, or international organizations."); 10 U.S.C. § 4356 (Authorizing the Superintendent of U.S. Military Academy to accept gifts on behalf of the Academy).

137. The author observed this while watching the Tour de France on television.

138. The author observed this several times while watching public television.

139. See, e.g., 5 U.S.C. § 3107 (Supp. IV 2000), 22 U.S.C. § 2455(f) (Supp. IV 1999) (United States Information Agency); 16 U.S.C. § 9(g) (Supp. IV 1999) (National Park Foundation); 20 U.S.C. § 959(a)(2) (Supp. IV 1999) (National Endowment for the Arts); 42 U.S.C. § 300aaa(a) (Supp. IV 1999) (Public Health Service); 42 U.S.C.A. § 12651g(a)(2)(A) (AmeriCorps); 47 U.S.C.A. § 399a (Supp. IV 1999) (Corporation for Public Broadcasting); Pub. L. No. 96-388, 94 Stat. 1547 (1980) (Holocaust Memorial Council).

140. By analogy, the American public may be receptive to donations and sponsorship of Category A and B MWR activities because, like these other federal agencies, the government would be spending private money on the activities rather than taxpayer dollars.

141. On the other hand, the American public probably does not view the Public Health Service as a typical fundraising organization either.

142. There are two possible solutions to this concern. First, an expanded military sponsorship program could limit agreements to corporations whose government business is below a certain dollar threshold. In that way, there would only be a de minimus concern with government partiality. Second, the military could limit sponsorship agreements to those companies that supply consumer products and services. See AR 215-1, *supra* note 2, para. 7-47d(2). This would also ameliorate the partiality concern.

143. Sesame Street accepted corporate sponsorship for the first time in 1998 after 30 years of commercial-free broadcasting. Sesame Street felt that its agreement with the Discovery Zone was necessary because of budget cutbacks in the Corporation for Public Broadcasting. Consumer advocate Ralph Nader criticized Sesame Street's decision to accept sponsorship. ST. LOUIS POST-DISPATCH, Oct. 7, 1998, at A8.

144. Even though the regulations do not prohibit expansion within MWR, compare discussion *supra* under the heading Arguments for Expansion of Commercial Sponsorship Program (arguing that some may interpret the regulations as prohibiting such expansion).

Endowment for the Arts and the Corporation for Public Broadcasting.¹⁴⁶ This agency could parallel the Jackson Foundation for the Advancement of Military Medicine, which receives and solicits private moneys for distribution to military medical facilities.¹⁴⁷ Such legislation could read:

There is created a Military Commercial Sponsorship Agency to further private enterprise sponsorship of military activities. The Agency may solicit and receive money and other property from a non-government entity in exchange for public recognition or opportunities for advertising and other promotions. Sponsors may designate money and property for distribution to specific components of the Armed Forces. If not specifically designated, the Agency shall deposit such money and property with the Department of Defense for distribution as the Department of Defense sees fit.¹⁴⁸

The benefit of this type of agency would be the centralization of DOD's commercial sponsorship activities. Unlike the current system where sponsorship varies between services, a super sponsorship agency would standardize sponsorship policy and practice. On the other hand, creation of yet another federal agency could require additional money,¹⁴⁹ personnel, office space, and equipment necessary for running yet another element of the DOD bureaucracy.

Preferably, future legislation would give the service secretaries approval authority for all types of sponsorship, within MWR and beyond MWR. The service secretaries could delegate the approval authority down to major activity commanders and installation commanders based on the dollar values of the sponsorship agreements. Such legislation could read:

The service secretaries may receive and solicit money and other property from a non-government entity in exchange for public recognition or opportunities for advertising and other promotions. Sponsors may designate money and property for distribution to specific components of the services. If not

specifically designated, the service secretaries shall distribute such money and property as they see fit. The service secretaries may delegate this approval and distribution authority as follows: \$1 million or greater – service secretary approval only; \$1 million to \$500,000 – major command approval; Below \$500,000 – installation commander approval. Installation commanders may further delegate this approval as they see fit.

Although this statutory scheme does not centralize DOD's sponsorship program, it has the advantage of not creating an additional bureaucracy. Moreover, it allows each service, and even each installation, to tailor its sponsorship program to its individual needs and its individual philosophy. Finally, it ensures greater accountability by placing responsibility for the program on the service secretaries rather than on a new DOD agency.

Conclusion

In an era of dwindling resources, budget cuts have eroded MWR opportunities for service members. In response to these cuts, DOD initiated a commercial sponsorship program to help fund MWR activities, but this program has limitations. An on-post Coca-Cola music festival is possible under current law and policy. An on-post FootLocker Gym is permissible under current law, but does not conform to current policy. The services should therefore change their policy to allow such sponsorship per a careful reading of *DOD Instruction 1015.10* and its implementing regulations. To make authority for such sponsorship crystal clear, DOD should amend *DOD Instruction 1015.10* to expressly allow sponsorship of all MWR activities. A Nike PT uniform agreement, however, is not feasible under current law because it would violate the Miscellaneous Receipts Statute. To allow this, DOD should propose legislation permitting an exception to the Miscellaneous Receipts Statute. Such legislation could create a Military Commercial Sponsorship Agency, or grant commercial sponsorship approval authority to the service secretaries.

145. As explained earlier, under current law, accepting sponsorship beyond MWR would violate the Miscellaneous Receipts Statute. See discussion *supra* at heading Miscellaneous Receipts.

146. It could also be similar to the United States Olympic Committee (USOC). 36 U.S.C. §§ 220501-220529 (Supp. IV 1999). The USOC has the specific power to "accept gifts, legacies, and devises in furtherance of its corporate purposes . . ." *Id.* at § 220505(b)(4). Trying to model a military sponsorship agency after the USOC, however, would open up a whole different can of worms in terms of potential scandals. Expanded military sponsorship would not want to succeed at the expense of its integrity. The military should not "bring in millions in sponsorships while working under the still-dissipating cloud of scandal hanging over the Olympic movement." Paula Parrish, *Dave Ogreaan to Resign as USOC Head of Fund-Raising*, THE GAZETTE (Colo. Springs, Colo.) Mar. 22, 2000, at Sports.

147. 10 U.S.C. § 178 (Supp. V 2000).

148. Perhaps the statute could also create a "Military Sponsorship Account" for deposit of sponsorship money, similar to the account in one of the DOD gift statutes. 10 U.S.C. § 2608.

149. Commercial sponsorship of such an agency is unlikely, given the necessity to remain impartial.

In a rapidly changing world, the military must constantly seek innovative ways to continue to provide a high quality of life to service members, retirees, and their families. Expansion

of commercial sponsorship is an excellent means to achieve that goal.